

DECISION



29135

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-214704

DATE: August 21, 1984

MATTER OF: XYZTEK Corporation

DIGEST:

1. Contracting agency, exercising reasonable discretion, may exclude a proposal from the competitive range when information deficiencies are so material that upgrading the proposal to an acceptable level would require major revisions or the submission of an entirely new proposal.
2. In determining whether information deficiencies are material, GAO will consider (1) how definitely or in what detail the solicitation calls for the information; (2) whether the omissions make the proposal unacceptable or merely inferior; (3) the scope and range of the omissions; and (4) whether a deficient but correctable proposal represents a significant cost savings.
3. When requirement for detailed technical literature is included in both request for proposals and written notice of deficiencies, but offeror fails to provide it by due date for submission of revised proposals, a contracting agency may properly exclude the proposal from the competitive range because it cannot determine whether the proposal is acceptable.
4. When automatic data processing system is so new that details have not yet been announced, a single information deficiency, i.e., failure to provide technical literature needed to evaluate proposed software, is material and provides a reasonable basis for eliminating the proposal from the competitive range.

029812

5. When a proposal contains material information deficiencies, an offeror's low price need not be considered.
6. Blanket offer to meet mandatory requirements will not substitute for a detailed description of proposed automatic data processing system and method of performing required services, particularly when more than one proposal remains in the competitive range after elimination of the proposal with information deficiencies.
7. When a common cutoff date has been established and offerors have been adequately advised of deficiencies through written and oral discussions, an agency properly may eliminate a revised proposal that still contains information deficiencies. The agency is not required to consider later-submitted information or otherwise to extend the negotiation process.
8. Whenever offerors are asked for information needed to determine whether proposals are acceptable or given an opportunity to revise their proposals, discussions have occurred.

This is a protest against the Air Force's refusal to consider technical literature, required for evaluation of proposed software, because it was not submitted until 2-1/2 months after the closing date of the solicitation requesting it and approximately 1 month after the cutoff date established by a written notice of deficiencies.

XYZTEK Corporation, the protester, argues that the Air Force Computer Acquisition Center, Hanscom Air Force Base, Massachusetts, improperly excluded it from the competitive range because the information was not provided within the required times.

We deny the protest.

Background:

The request for proposals, No. F19630-83-R-0013, was issued to 40 firms on July 19, 1983. It called for up to 310 transportable minicomputers (70 initially and an optional 240) and systems software that will be used to support combat units deployed both in the United States and overseas. The award, which has not yet been made, will go to the offeror meeting all mandatory requirements at the lowest evaluated cost over a 7-year life cycle.

The Air Force found all proposals submitted on December 28, 1983, deficient in some way. The record indicates that on January 5, 1984, XYZTEK, which had provided "minimal" hardware documentation and no software documentation, was advised by telephone that the information was needed to validate its proposal. The firm agreed to submit it as soon as possible.

On January 31, 1984, having made a competitive range determination that included XYZTEK, the Air Force issued a written notice to the firm, identifying 28 different deficiencies and requesting that XYZTEK update its proposal or otherwise respond. In addition, the Air Force requested preaward surveys of all offerors in the competitive range. Responses and/or revised proposals were due no later than 3 p.m. on February 15, 1984.

XYZTEK, in its response, advised the Air Force that because some of the hardware that it proposed had recently been announced, details concerning the "software device drivers and operating system" were not yet available. New literature, XYZTEK stated, was expected and would be provided within 2 weeks.

By March 9, 1984, when the Air Force completed technical and cost reviews and made a second competitive range determination, it still had not received XYZTEK's documentation. (At this time, three other firms remained in the competitive range, and one other firm had been eliminated for failure to meet Air Force requirements.)

The Air Force found that XYZTEK's failure to supply the documentation was a technical deficiency; that correction would require an entirely new proposal; and that without this, XYZTEK no longer had a reasonable chance of being selected for award. By telephone and letter dated March 13, 1984, the Air Force advised XYZTEK that it had been eliminated from the competition.

XYZTEK immediately forwarded the missing documentation, which the Air Force received on March 19, 1984. In addition, the firm filed protests with both the agency and our Office.

Bases of Protest:

XYZTEK argues that it has taken no exception to the Air Force's specifications and has in fact guaranteed to meet all mandatory requirements. Asserting that it is the lowest offeror (a fact the Air Force disputes), the firm contends that it is entitled to award.

XYZTEK states that during February and early March, it made repeated, unsuccessful attempts to contact the contract manager by telephone, but that her representative at Hanscom advised that there were no outstanding deficiencies in its proposal (a fact the Air Force also disputes). In addition, the firm states, it was assured by the preaward survey team that the Air Force had no concerns other than those that were being addressed by the survey.

According to XYZTEK, it therefore assumed that the software documentation would be for information purposes only. In addition, XYZTEK states, it assumed that the Air Force would conduct discussions with it if there were further questions, because the solicitation's milestone chart, as amended, listed February 21, 1984, as the starting date for negotiations. (The firm appears to believe that earlier inquiries were not "discussions.") XYZTEK concludes that the Air Force is improperly attempting to exclude a qualified vendor from competition.

GAO Analysis:

A contracting agency, exercising reasonable discretion, may exclude a proposal from the competitive range when information deficiencies are so material that upgrading the proposal to an acceptable level would require major revisions or the submission of an entirely new proposal. In determining whether omissions are material enough to warrant exclusion, our Office considers, among other things:

- (1) how definitely or in what detail the solicitation called for the information;
- (2) whether the omissions show that the offeror does not understand what would be required under the contract, or whether they merely make the proposal inferior but not unacceptable;
- (3) the scope and range of the omissions;
and
- (4) whether a deficient but correctable proposal represents a significant cost savings.

Servrite International, Ltd., B-187197, Oct. 8, 1976, 76-2
CPD ¶ 325.

Applying these factors to XYZTEK's case, we find first that the requirement for detailed technical literature was very definite. Both the general instructions to offerors and the specific instructions for proposal preparation stated that such literature must be submitted with proposals and must substantiate each claim of compliance. Offerors also were warned that the literature was for purposes of validation and that failure to submit it might cause rejection of their proposals.

The January 31, 1984, deficiency notice to XYZTEK reiterated the requirement for technical literature and referenced those sections of XYZTEK's proposal to which it applied. It stated:

"Action requested: Please provide complete published technical manuals for each software package proposed (operators' manual, user manuals, reference manuals, etc.). Update your proposal to include technical references for each mandatory requirement. The references must be provided to the manual page and paragraph level for each requirement."

Second, we find that although XYZTEK's initial proposal was considered one that could be made acceptable, even after revisions that apparently corrected other deficiencies, the Air Force could not determine whether the proposed software met its requirements. This is quite different from a determination that lack of information merely renders a proposal inferior.

Further, because XYZTEK admittedly was offering a system so new that details had not yet been announced, we believe that a single omission in this case was material. As the contracting officer, responding to the protest to the Air Force, stated:

" . . . the Air Force goes to great efforts to validate proposals This process provides a vital function in ADP [automatic data processing] contracting. The ADP market historically has seen vendors proposing what they can't deliver. Through validation of proposals prior to contract award, we insure [that] the winning offeror can comply with the mandatory aspects of the contract."

In addition, it does not appear that inclusion of XYZTEK's proposal in the competitive range would result in a significant savings. The record shows that, contrary to the protester's assertions, it was not the lowest evaluated offeror. In any event, when a proposal contains material information deficiencies, an offeror's low price need not be considered. See Century Brass Products, Inc., B-190313, April 17, 1978, 78-1 CPD ¶ 291.

XYZTEK's other arguments are without legal merit. It is well established that a blanket offer to meet mandatory requirements, such as XYZTEK asserts that it made, will not substitute for a detailed description of how a firm plans to do so. See, e.g., Logic Systems, B-188997, Nov. 23, 1977, 77-2 CPD ¶ 398. Moreover, when a solicitation warns offerors to completely address their proposed systems and method of performing required services, they risk rejection of even initial proposals if they fail to do so. BKC, Inc., et al., B-198905, June 10, 1981, 81-1 CPD ¶ 474. This is particularly true when more than one other proposal remains in the competitive range after the deficient one has been eliminated. Id.

In this case, XYZTEK ultimately provided the required documentation. There was no requirement, however, that the Air Force consider it. When a common cutoff date has been established and offerors have been adequately advised of deficiencies through written and oral discussions, a contracting officer may properly eliminate a revised proposal that still contains information deficiencies without extending the negotiation process or affording the offeror another opportunity to make revisions. Telex Computer Products, Inc., B-190794, July 31, 1978, 78-2 CPD ¶ 78; Century Brass Products, Inc., supra.

In this regard, XYZTEK relied at its own risk on oral advice from someone other than the contracting officer that its revised proposal had no outstanding deficiencies. See Center for Employment Training, B-203555, March 17, 1982, 82-1 CPD ¶ 252. The request for proposals specifically stated that "no information concerning this solicitation or requests for clarification will be provided in response to offeror-initiated telephone calls." Neither any other individual at Hanscom or members of the preaward survey team would have been authorized to discuss whether the deficiencies in XYZTEK's initial proposal had been adequately addressed.

Nor should XYZTEK have been misled by the February 21, 1984, starting date for discussions specified in the request for proposals. The milestone chart clearly

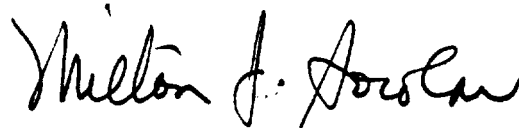
29135

B-214704

indicated that all dates were for planning purposes only and were subject to change. Whenever offerors are asked for information needed to determine whether their proposals are acceptable or are given an opportunity to revise proposals, discussions have occurred. Emerson Electric Co., B-213382, Feb. 23, 1984, 84-1 CPD ¶ 233. Here, the Air Force specifically advised XYZTEK, in its letter of January 31, 1984, "beginning with this communication, the government will conduct written discussions with you to provide an opportunity to correct . . . deficiencies in your proposal," and stated that if the firm chose, it might revise its proposal.

In summary, we find that the Air Force reasonably eliminated XYZTEK from the competitive range for failure to provide the technical literature needed to evaluate its proposed software in a timely fashion.

The protest is denied.



Acting Comptroller General
of the United States